

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

AMIR WHITEHURST, : NO. 3:17-CV-00903  
:  
Plaintiff :  
:  
vs. :  
:  
LACKAWANNA COUNTY, :  
et al., :  
:  
Defendants :

VIDEOTAPE DEPOSITION OF DOMINIC A. SISTI, Ph.D.

Taken in the offices of Burns White, LLC,  
100 Four Falls, Suite 515, 1001 Conshohocken State  
Road, West Conshohocken, Pennsylvania, on Friday,  
February 22, 2019, commencing at 1:11 p.m., before  
Sara J. Vanchure, Notary Public.

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VERITEXT LEGAL SOLUTIONS  
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 COMERFORD LAW OFFICES</p> <p>3 BY: CURT M. PARKINS, ESQ.</p> <p>4 204 Wyoming Avenue</p> <p>5 Scranton, Pennsylvania 18503</p> <p>6 (570) 880-0777</p> <p>7 curt@comerfordparkins.com</p> <p>8 -- Representing the Plaintiff</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 BURNS WHITE, LLC</p> <p>14 BY: JOSEPH T. HEALEY, ESQ.</p> <p>15 NICOLE C. FREILER, ESQ.</p> <p>16 100 Four Falls, Suite 515</p> <p>17 1001 Conshohocken State Road</p> <p>18 West Conshohocken, Pennsylvania 19428</p> <p>19 (484) 567-5700</p> <p>20 jthealey@burnswhite.com</p> <p>21 -- Representing the Defendants Correctional Care,</p> <p>22 Inc.; Edward Zaloga, D.O.; Alexis Moritzkat; Amy</p> <p>23 Collarini; Raenn Rodriguez; Nicole Ortana; and</p> <p>24 "Nurse Ken" (Ken McCawley)</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX OF WITNESSES</p> <p>2 EXAMINATION PAGE</p> <p>3 DOMINIC A. SISTI, Ph.D.</p> <p>4 by Mr. Healey 8, 103</p> <p>5 by Mr. Francis 57, 108</p> <p>6 by Mr. Heisler 68</p> <p>7 by Mr. Parkins 69, 109</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>INDEX OF EXHIBITS</p> <p>22</p> <p>EXHIBIT DESCRIPTION MARKED</p> <p>23</p> <p>Sisti 1 - Sisti Notice of Videotaped</p> <p>24 Deposition 6</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES CONT'D:</p> <p>2 CIPRIANI &amp; WERNER, P.C.</p> <p>3 BY: CHRISTIAN W. FRANCIS, ESQ.</p> <p>4 415 Wyoming Avenue</p> <p>5 Scranton, Pennsylvania 18503</p> <p>6 (570) 347-0600</p> <p>7 cfrancis@c-wlaw.com</p> <p>8 -- Representing the Defendant Satish K. Mallik,</p> <p>9 M.D.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 CIPRIANI &amp; WERNER, P.C.</p> <p>14 BY: DAVID HEISLER, ESQ.</p> <p>15 415 Wyoming Avenue</p> <p>16 Scranton, Pennsylvania 18503</p> <p>17 (570) 347-0600</p> <p>18 dheisler@c-wlaw.com</p> <p>19 -- Representing the Defendant Lackawanna County</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Also present: Ryan Morton</p>	<p style="text-align: right;">Page 5</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2 Direction to Witness Not to Answer</p> <p>3 PAGE LINE PAGE LINE</p> <p>4 -- -- -- --</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>Request for Production of Documents</p> <p>9</p> <p>PAGE LINE PAGE LINE</p> <p>10</p> <p>-- -- -- --</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>Stipulations</p> <p>16</p> <p>PAGE LINE PAGE LINE</p> <p>17</p> <p>6 2 -- --</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Questions Marked</p> <p>23 PAGE LINE PAGE LINE</p> <p>24 -- -- -- --</p>

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1 Q. Very good. And so can you outline  
2 generally for me -- and be it from your report or  
3 whatever is easiest for you -- the documents that you  
4 reviewed and drafted in your report?  
5 A. And I do have copies of those, in fact.  
6 Q. Okay.  
7 A. So I consulted with the Canon of  
8 Bioethics Literature to start and then I drilled into  
9 the more specific literature on the ethics of  
10 correctional medicine, with a particular focus on  
11 correctional mental healthcare; and then I reviewed  
12 the guidelines, statements, model processes and  
13 practices issued by professional organizations such as  
14 the American Psychiatric Association, the National  
15 Commission for Correctional Mental Health, the  
16 American Medical Association, and the American Academy  
17 of Psychiatry and the Law.  
18 THE VIDEOGRAPHER: I'm sorry, Doctor. Do  
19 you have the microphone on?  
20 THE WITNESS: Oh, I'm sorry. Oh, it fell  
21 off. I apologize. I'll try it this way (indicating).  
22 BY MR. HEALEY:  
23 Q. And in addition, Doctor, did you review  
24 deposition transcripts?

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1 A. Yes, I did.  
2 Q. Can you tell me --  
3 A. I'm sorry. Can I tell you -- can you say  
4 that again?  
5 Q. Yeah. Whose deposition transcripts did  
6 you review?  
7 A. The ones that are listed in the report  
8 and, in addition, the more recent reports by experts  
9 Evans, Folks, Hughes, and Joy.  
10 Q. Understood. And did you review the  
11 entirety of the Lackawanna County Prison chart?  
12 A. What was provided to me I reviewed. I'm  
13 not sure if that was the entirety, but what was  
14 provided to me I reviewed.  
15 Q. Are you able to tell me, the copy that  
16 you were provided of the medical records, how many  
17 pages it was?  
18 A. Sure. I can look.  
19 Q. Thanks.  
20 A. Let's see here. So there's a number of  
21 files, all different PDF files here. Let's see.  
22 Onsite medical records. It appears to be -- at least  
23 the one I have in front of me is 64 PDF pages,  
24 prescription logs, 52 pages. I believe that's all I

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1 have in terms of the records from the jail. There are  
2 records also from the offsite referral.  
3 Q. Oh, from Geisinger Medical Center?  
4 A. Correct. Well, actually these are CCI  
5 records as well now that I look. Well, maybe not.  
6 Nope. They're Geisinger. Correct.  
7 Q. Okay. The --  
8 MR. PARKINS: I think there were -- there  
9 were, just for clarity, Geisinger records in the CCI  
10 records I think.  
11 MR. HEALEY: There are, yeah.  
12 THE WITNESS: I noticed that.  
13 MR. PARKINS: So do you have -- you have  
14 them all split up.  
15 THE WITNESS: They were split up.  
16 MR. PARKINS: You don't have them all as  
17 one joint thing with how many pages it is? Okay.  
18 BY MR. HEALEY:  
19 Q. Are you able to tell me what's the  
20 64-page PDF?  
21 A. This appears to be the medical records --  
22 Q. Can I look over your shoulder?  
23 A. You sure can. Why not?  
24 Q. Yeah.

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1 A. It starts with this page (indicating).  
2 Q. Okay. And then that's a 64-page document  
3 which you believe to be the entirety of the Lackawanna  
4 County Prison medical chart that you received?  
5 A. I don't know if it's the entirety or not.  
6 Q. Oh, okay. Is that what -- are those the  
7 only records that you have, those 64 pages, which  
8 would purport to be the Lackawanna County Prison  
9 medical chart for Mr. Whitehurst?  
10 A. I believe so.  
11 Q. Okay. And the reason I ask, Dr. Sisti,  
12 is the chart that I have for the Lackawanna County  
13 Prison has 215 pages, but it appears that yours is  
14 just the 64 pages?  
15 A. Well, there -- as I mentioned, there were  
16 other files. So maybe you can take a look at these,  
17 too. There's some documentation here, medical  
18 restriction sheets that might --  
19 Q. Okay.  
20 A. You know, might be in your portfolio.  
21 Q. I see. Okay.  
22 A. And then there's some prescription logs  
23 here that might again be combined --  
24 Q. Oh, okay.



<p style="text-align: right;">Page 18</p> <p>1 Q. Have you ever treated patients?</p> <p>2 A. I never -- I'm not a clinician.</p> <p>3 Q. Okay. Have you ever been qualified as an</p> <p>4 expert in a case where you opined as to the standard</p> <p>5 of care of an internal medicine physician?</p> <p>6 A. No.</p> <p>7 Q. Would you be qualified to do that?</p> <p>8 A. If it's a clinical question, I would not</p> <p>9 be. If it was an ethical question, I would be.</p> <p>10 Q. Okay. And how do you -- how do you make</p> <p>11 that distinction?</p> <p>12 A. So clinical questions are questions</p> <p>13 related to trajectory of care, specific medications</p> <p>14 being used, interventions, you know, the standard</p> <p>15 things that doctors have to figure out. Ethical</p> <p>16 questions are characterized generally by conflicts and</p> <p>17 values when it's individuals. If it's an</p> <p>18 organizational issue, it might manifest as, say,</p> <p>19 questions around particular policies or procedures</p> <p>20 related to -- related to clinical care.</p> <p>21 So, for example -- I'll give you an</p> <p>22 example where there's an interest -- there's a</p> <p>23 distinction. With -- and we used the example of end</p> <p>24 of life care earlier. In looking at end of life care,</p>	<p style="text-align: right;">Page 20</p> <p>1 are ethical problems.</p> <p>2 Q. I understand. So, for our purposes, you</p> <p>3 can't comment upon the care, treatment, medications,</p> <p>4 orders, things of that nature from a medical</p> <p>5 standpoint; but in terms of ethical relationships or</p> <p>6 things of that nature, that you would be able to</p> <p>7 comment on?</p> <p>8 A. I think that's correct.</p> <p>9 Q. Okay.</p> <p>10 A. If you -- could you repeat that?</p> <p>11 Q. Sure. It was a long one. In terms of</p> <p>12 clinical decision making by an internal medicine</p> <p>13 physician, you wouldn't be qualified to testify to</p> <p>14 that; but if there was some underlying ethical issue</p> <p>15 presented, that you would be able to comment on?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. What was it that you were called</p> <p>18 upon to do in this case?</p> <p>19 A. To examine the record and ascertain if</p> <p>20 the clinical care providers were meeting the ethical</p> <p>21 standards that have been developed by professional</p> <p>22 organizations in the delivery of healthcare inside</p> <p>23 correctional facilities.</p> <p>24 Q. Is meeting the ethical responsibilities</p>
<p style="text-align: right;">Page 19</p> <p>1 there are certain kinds of clinical choices that one</p> <p>2 can make; but when there's a conflict between those</p> <p>3 choices, the ethicist maybe steps in to help</p> <p>4 illuminate the different choices and, in doing so,</p> <p>5 help to resolve a values conflict about what might the</p> <p>6 patient want, how should they be treated, is it</p> <p>7 ethical to, say, withdraw treatment at a particular</p> <p>8 juncture or continue treatment at a particular</p> <p>9 juncture. So they're related, but they're distinct.</p> <p>10 Q. Would you agree with me that the standard</p> <p>11 of medical care is something that you wouldn't be</p> <p>12 qualified to testify to with respect to an internal</p> <p>13 medicine physician?</p> <p>14 A. I mean I think that I could opine on</p> <p>15 pretty -- so like if an internal medicine physician</p> <p>16 is -- let's use, like, a random example -- is, say,</p> <p>17 prescribing medication and they have a conflict of</p> <p>18 interest, it might be an appropriate, you know,</p> <p>19 medication, you know, but they might be, say, taking</p> <p>20 payments from a pharmaceutical company, in which case</p> <p>21 I would be able to say they're violating a standard of</p> <p>22 care. That's not appropriate. That's unethical. It</p> <p>23 might be that the drug is okay, but the milieu or the</p> <p>24 context within which that practice is happening there</p>	<p style="text-align: right;">Page 21</p> <p>1 different from the standard of care applicable to</p> <p>2 physicians?</p> <p>3 A. Say that again.</p> <p>4 Q. Sure. Is meeting ethical</p> <p>5 responsibilities different from the standard of care</p> <p>6 applicable to internal medicine physicians and</p> <p>7 psychiatrists?</p> <p>8 A. So the ethical conduct of clinicians,</p> <p>9 psychiatrists, any physician is prior to the standard</p> <p>10 of care usually. So the idea that an individual can</p> <p>11 meet standard of care while being egregiously</p> <p>12 unethical just seems sort of impossible. So, yeah, in</p> <p>13 a sense, standard of care requires that a physician be</p> <p>14 ethical.</p> <p>15 Q. Okay. But your purpose is not, nor would</p> <p>16 you be comfortable opining as to the standard of care</p> <p>17 for an internal medicine physician?</p> <p>18 A. Again, if it relates to something where</p> <p>19 there's an ethical conflict or there is a deep policy</p> <p>20 problem then, yes, I could opine on that.</p> <p>21 Q. Okay.</p> <p>22 A. It would not be --like I'm not -- I'm not</p> <p>23 qualified to opine on what drug should be prescribed,</p> <p>24 for example.</p>

6 (Pages 18 - 21)



<p style="text-align: right;">Page 26</p> <p>1 Q. Is it your opinion that NCCHC 2 accreditation is a requirement? 3 A. No, it is not. 4 Q. Okay. Is it -- did you find violations 5 of NCCHC guidelines? 6 A. Yes. 7 Q. What were they? 8 A. So I think -- I mean I list a few in the 9 report, including the use of prolonged restraints, 10 seclusion, solitary confinement. 11 Q. Is prolonged restraint -- is that a 12 corrections side or is that a medical side? 13 A. What do you mean? 14 Q. The use or the decision to place an 15 inmate in solitary -- or in a restraint chair, is that 16 a medical choice or a corrections choice? 17 A. So all of these choices are intermingled 18 because the individual has a serious mental illness; 19 and so the corrections side should be working 20 carefully with the medical side to administer whatever 21 kind of seclusion or restraint they deem appropriate, 22 with the knowledge that such restraint is actually 23 contraindicated for individuals who have serious 24 mental illness because it can exacerbate the symptoms</p>	<p style="text-align: right;">Page 28</p> <p>1 You know, it's meant that the individual 2 who's in a camera cell should be watched by -- and 3 actually it's important to say this -- a clinician and 4 not a correctional officer, you know, in -- you know, 5 entirely, not just 15-minute checks. 6 Q. Are you suggesting a clinician should be 7 dedicated to one-on-one observation of Mr. Whitehurst? 8 A. Yes. 9 Q. A clinician meaning a nurse? A 10 physician? 11 A. So in the case of Mr. -- so I know, you 12 know, he had a one-on-one with a nurse. I'm not -- 13 it's not clear to me that she was monitoring 14 continuously, you know, not -- you know, one-on-one 15 doesn't simply mean checking in intervals. It means 16 consistent viewing of a screen, a monitor. 17 Q. And that, in your opinion, should be 18 performed by a clinician, be it a nurse or a doctor, 19 one-on-one on Mr. Whitehurst? 20 A. Correct. 21 Q. Okay. Did you review or did you see the 22 extraction video of Mr. Whitehurst? 23 A. I did. 24 Q. Okay. Did you know the conduct which led</p>
<p style="text-align: right;">Page 27</p> <p>1 and so -- so that was -- you know, that was a key -- 2 in my opinion, that was a key transgression of the -- 3 you know, the guidelines of the National Commission. 4 Now, that's not to say restraint 5 seclusion is completely off the table; but if a person 6 is in a state of, you know, serious crisis, has a 7 serious mental illness and is decompensating, that's 8 what made me feel as though they transgressed the 9 standard presented by the National Commission. 10 Q. Is it your opinion that Mr. Whitehurst 11 should not have been placed in a restraint chair? 12 A. Well, like I said, restraint chairs may 13 be appropriate for a time. My understanding was he 14 was in it for longer than eight hours and that -- that 15 flies in the face of the guidelines that I've 16 reviewed. 17 Q. So is the eight hours in and of itself 18 the violation that he was in a restraint chair for -- 19 A. Well, there's other -- there's other 20 aspects to that guideline, which include careful 21 monitoring, 15-minute checks, periodic breaks if 22 possible. You know, he was in a camera cell. So 23 essentially there was a clinician that was watching, 24 like, at all times, not just through intervals.</p>	<p style="text-align: right;">Page 29</p> <p>1 to the extraction? 2 A. I did read about it. 3 Q. Did you feel that it was appropriate 4 after that conduct where he had barricaded himself in 5 a solitary cell, torn the bed out of the floor that 6 he was appropriate for a restraint chair at that 7 point? 8 A. I think yes. So I would say -- and 9 again, you know, this is from my reading of the 10 records. I don't -- I didn't see video of prior 11 behavior, but my -- my view on this is that restraints 12 would be appropriate for a period of time such that he 13 could be observed and then transferred to an adequate 14 therapeutic setting. 15 Q. Such as? 16 A. A hospital. 17 Q. The decision to transfer to a hospital 18 would be a clinician's decision, correct, based upon 19 their observations? 20 A. Well, I'm again gleaned from the 21 guidelines I've read, which is that if an individual 22 needs to be in restraint for such a long period of 23 time, they are not in a therapeutic setting. In fact, 24 such a long period of restraint is often considered a</p>

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1 standards is to demonstrate that you have standards,  
 2 policies, and practices that are clearly documented.  
 3 I do not believe that CCI had those things.  
 4 Q. Okay. Did Lackawanna County Prison have  
 5 policies and procedures which governed medical care?  
 6 A. So I did review a couple of their  
 7 policies and they do exist. They are rather vague and  
 8 broad and I believe they leave quite a bit of  
 9 discretion to the contractors or providers, which  
 10 makes sense because you would assume the contractors  
 11 or providers would bring their own policies and  
 12 practices and I don't -- I didn't see any of those  
 13 from CCI.  
 14 Q. Okay. Anything else as it relates to the  
 15 guidelines?  
 16 A. Not at the moment.  
 17 Q. Okay. CC -- looking at page 8, "CCI did  
 18 not have adequate staffing and/or medical and  
 19 psychiatric training in regards to its nursing staff  
 20 and psychiatric providers." What's the basis of that  
 21 opinion, Dr. Sisti?  
 22 A. The depositions I read where they --  
 23 where everyone -- in fact, even Dr. Mallik and  
 24 Dr. Zaloga, Nurse June Reed -- all described no

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1 training.  
 2 Q. How about adequate staffing?  
 3 A. So again I'm gleaned that from the  
 4 depositions I reviewed, in particular Nurse Reed.  
 5 There was another deposition that counsel just  
 6 provided me from another nurse who described the lack  
 7 of personnel; and then I think, more importantly, the  
 8 fact that Dr. Mallik himself was only present I think  
 9 six hours a week or something for, you know, a  
 10 population of inmates who, you know, number in the  
 11 thousands; and, you know, not to say they all needed  
 12 psychiatric care, but it seemed to me that that was  
 13 not a sufficient number of hours. The other -- you  
 14 know, other correctional facilities that I've worked  
 15 with have full-time psychiatrists on staff.  
 16 Q. Did you read in Dr. Mallik's transcript  
 17 where he said everybody that was in a camera cell  
 18 would be seen by him every two days? Were you aware  
 19 of that or whenever he was present in the facility?  
 20 A. Yes.  
 21 Q. Okay. And is that, in your mind, not  
 22 appropriate?  
 23 A. Insufficient.  
 24 Q. Why is that?

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1 A. When an individual is in crisis, when  
 2 they're in a camera cell, they should be  
 3 comprehensively evaluated on a daily basis.  
 4 Q. In addition to being watched one-on-one  
 5 by a clinician around the clock?  
 6 A. I believe so.  
 7 Q. Okay. So what you're saying here is  
 8 adequate staffing would require round-the-clock  
 9 observation by a trained clinician of Mr. Whitehurst  
 10 as well as daily intervention by a psychiatrist?  
 11 A. I didn't say intervention, but  
 12 evaluation.  
 13 Q. Okay.  
 14 A. Absolutely, and the -- the rationale  
 15 there is that the services provided inside of the jail  
 16 should meet a community standard and that would be a  
 17 community standard. You know, in inpatient  
 18 psychiatric facilities, that's the community standard.  
 19 There's rounding every day and -- you know, so every  
 20 other day is not sufficient.  
 21 Q. Is this written down anywhere, this  
 22 standard that you're talking about? Where does it  
 23 come from?  
 24 A. So I have reviewed the APA standards that

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1 describe the evaluation process. The Journal of the  
 2 American Academy of Psychiatry and the Law has  
 3 articles on how best to manage individuals in crisis.  
 4 My knowledge of inpatient psychiatric facilities as  
 5 representing the community standards inform my opinion  
 6 here. So is there one place where this is? No.  
 7 Q. Okay.  
 8 A. I mean it's a standard that is met  
 9 through the professional -- you know, sort of  
 10 professional consensus.  
 11 Q. Was Mr. Whitehurst suffering from the  
 12 effects of spice, the effects of mental illness, or  
 13 both, in your opinion?  
 14 A. Again, not being a clinician or a  
 15 psychiatrist, I hesitate to, you know, make a  
 16 conclusive statement on that, but the deeper question  
 17 is that is there a distinction here between an  
 18 intrinsic mental illness or one that's caused by spice  
 19 and -- okay.  
 20 Q. Go ahead. I'm sorry.  
 21 A. I was just going to say and I would argue  
 22 that his mental illness was probably exacerbated by  
 23 spice, but that he did have a psychosis spectrum  
 24 disorder; and, you know, the literature now is



<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. In Dr. Mallik's transcript though, 2 however, he did review his notes and read them into 3 the record; correct? 4 A. In which? 5 Q. In his deposition. You were talking 6 about being unable to read his records. So from 7 his -- from his deposition transcript, were you able 8 to glean what was in those progress records and 9 orders? 10 A. No, I wouldn't say I was able to glean 11 the specific details of those progress notes. 12 Q. Okay. Were you aware that in between 13 May 24th and June 8th of 2015 that Dr. Mallik, along 14 with Nurse Moritzkat, saw Mr. Whitehurst every two 15 days and that a progress record was entered? 16 A. I am aware that he did see Dr. -- see 17 Mr. Whitehurst every two days and I am not aware 18 that -- however, that he was actually evaluated every 19 two days. 20 Q. Okay. 21 A. He might have looked in and saw him. I 22 don't know what that means. I don't know what the -- 23 you know, I don't know what was done, what kind of 24 care was delivered, but yes. I would say, yes, every</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. And so we do know that -- and 2 we'll use the term interaction just to be fair. 3 Whatever interaction that Dr. Mallik had with 4 Mr. Whitehurst he at least recorded in a progress note 5 and entered orders on the chart? 6 A. Again I don't -- yes. I mean I guess 7 that would be true. I don't know about the actual 8 progress notes and where they reside though. 9 Q. Okay. I want to talk about the contract. 10 You say, "CCI entered into a contract with Lackawanna 11 County that was fundamentally conflicted." What's the 12 basis for that? And I'm looking at page 8 of your 13 report. 14 A. So there appeared to be an incentive to 15 not use outside hospitalization because it would 16 affect the cost of the care for particular inmates, 17 and there were I believe provisions in that contract 18 that made it more -- that -- so let me start -- let me 19 think this through because my impression was 20 Dr. Zaloga's contract with the county aimed to 21 minimize the cost of caring for individuals inside the 22 jail. 23 Insofar as he could do that, he I believe 24 hesitated to use outside providers -- in other words,</p>
<p style="text-align: right;">Page 43</p> <p>1 two days they interacted. 2 Q. They interacted and that interaction was 3 recorded in progress notes drafted by Dr. Mallik along 4 with corresponding orders in the chart; correct? 5 A. That's a -- that would I believe be true. 6 Let me just ask you -- 7 Q. Sure. 8 A. -- about the progress notes because I'm 9 not sure I have them. 10 Q. Yeah. 11 A. If you have a copy, a hard copy, that 12 might be helpful. 13 Q. Yeah. What I'm looking at, Doctor, 14 are -- and they're Bates stamped 198 through 208, 15 which I believe are the orders and the progress notes 16 for Dr. Mallik. 17 A. Yes. I recognize the writing. So these 18 I've seen. 19 Q. Okay. 20 A. Yes. 21 Q. And essentially what -- 22 A. But I haven't -- I have no idea what they 23 say and I don't know -- I've not seen anything 24 transcribed so --</p>	<p style="text-align: right;">Page 45</p> <p>1 transfers to hospitals -- because they're much more 2 expensive than treating in-house. Now, I do 3 understand that the county would end up paying that 4 tab, but he in communications with the county 5 commissioners has -- I believe has -- and I believe 6 I've read some minutes from these meetings where he 7 describes trying to minimize the cost for taxpayers. 8 Q. My question is this is a situation 9 where -- based upon your review of the contract where 10 it's a cost passed through to the county; correct? 11 A. Yes. 12 Q. So, in other words, if someone -- if an 13 inmate were to be sent to an outside facility, that 14 money is paid by the county as opposed to Correctional 15 Care, Inc.? 16 A. So to -- so I understand what you're 17 asking. 18 Q. Right. 19 A. The incentive is to continue to have the 20 contract by showing that you can save the county 21 money, is to continue to be contracted by the county 22 because you are efficient and you save the county 23 money. 24 Q. Well, the other alternative is there are</p>



<p style="text-align: right;">Page 50</p> <p>1 suffering a psychiatric emergency?</p> <p>2 A. Yes.</p> <p>3 Q. When?</p> <p>4 A. Probably from the moment he walked in the</p> <p>5 door.</p> <p>6 Q. So it's your contention from May 24th of</p> <p>7 2015 through June 9th of 2015 Mr. Whitehurst was in a</p> <p>8 continual psychiatric emergency state?</p> <p>9 A. It actually worsened so yes.</p> <p>10 Q. It worsened after he was extracted from</p> <p>11 his cell? His psychiatric emergency became worse</p> <p>12 after that?</p> <p>13 A. Well, I believe it worsened just</p> <p>14 longitudinally through time. So it was exacerbated</p> <p>15 but, yeah, it continued to get worse.</p> <p>16 Q. Okay. Number 5, "It appears Dr. Zaloga</p> <p>17 was unprofessional and on several several occasions</p> <p>18 demonstrated disdain for his nursing staff." What is</p> <p>19 that based on?</p> <p>20 A. That was based on Nurse Reed's discussion</p> <p>21 of how Dr. Zaloga would yell at the staff.</p> <p>22 Q. Only Nurse Reed though?</p> <p>23 A. Yes.</p> <p>24 Q. When Mr. Whitehurst was in the restraint</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. That was May 25th.</p> <p>2 A. Okay. And he was in the restraint chair</p> <p>3 for how long?</p> <p>4 Q. That I'm not -- it has 23:50 SERT team</p> <p>5 called and then 12:25, 4:40, and then 9:00 --</p> <p>6 A. Right.</p> <p>7 Q. -- the next morning.</p> <p>8 A. Yeah. So I do recall that. There were</p> <p>9 like nine hours where I don't know if he was checked</p> <p>10 physically.</p> <p>11 Q. Okay.</p> <p>12 A. Physically checked. So on that timeline</p> <p>13 I don't see any evidence that he was actually checked</p> <p>14 physically at intervals. He might -- you know, he was</p> <p>15 monitored by camera, but did they walk into the cell</p> <p>16 and actually check in intervals?</p> <p>17 Q. Well, I can show you the records.</p> <p>18 A. Yeah.</p> <p>19 Q. And just so we're working off the same</p> <p>20 page, going from the SERT chair down, would that</p> <p>21 reflect that it looks like the nurses are actually</p> <p>22 examining him as opposed to just looking at the</p> <p>23 screen?</p> <p>24 A. Yes. So what happened here was that they</p>
<p style="text-align: right;">Page 51</p> <p>1 chair I believe on May 25th and 26th, are there</p> <p>2 nursing notes which reflect periodic checks on him?</p> <p>3 A. I believe so.</p> <p>4 Q. Okay. If Dr. Evans testified that there</p> <p>5 was no evidence at all of any nursing checks of him</p> <p>6 while he was in the restraint chair, would that be</p> <p>7 incorrect?</p> <p>8 A. I believe so. I believe that they --</p> <p>9 that -- so I don't know if they were physical checks</p> <p>10 where they actually went into the cell; however, the</p> <p>11 nurses did obviously monitor him on the screening.</p> <p>12 Q. Okay.</p> <p>13 A. So I don't recall if they actually went</p> <p>14 in and checked the actual tethers that are used in the</p> <p>15 restraint chair, which is something that they're</p> <p>16 supposed to do every 15 -- every so often.</p> <p>17 Q. For example -- and I could just read it</p> <p>18 to you. "Inmate removed from restraints. No</p> <p>19 circulatory impairment. Positive pedal and radial</p> <p>20 pulses." This -- "No discoloration." This</p> <p>21 demonstrates they actually went in and examined him;</p> <p>22 correct?</p> <p>23 A. What -- so what day was -- at what point</p> <p>24 was that?</p>	<p style="text-align: right;">Page 53</p> <p>1 checked on Mr. Whitehurst at 11:50 p.m. and at</p> <p>2 4:40 p.m., physically checked the -- actually I take</p> <p>3 that back. It does -- again it does not appear to me</p> <p>4 from this record that you can -- that we can say with</p> <p>5 confidence that he was checked between the hours of</p> <p>6 11 -- from 11:50 p.m. on 5-25 and 9 a.m. Something's</p> <p>7 wrong with the dates here but --</p> <p>8 Q. Okay.</p> <p>9 A. But, no, I would say that one cannot -- I</p> <p>10 cannot see how I can say one way or the other whether</p> <p>11 they checked Mr. Whitehurst's restraints physically</p> <p>12 during that duration of his time in the restraint</p> <p>13 chair.</p> <p>14 Q. I see. You just can't say one way or the</p> <p>15 other based on the report?</p> <p>16 A. Well, I would assume that they would have</p> <p>17 documented if they went into the cell and checked the</p> <p>18 straps and things.</p> <p>19 Q. How would they get vital signs?</p> <p>20 A. Can I see that again?</p> <p>21 Q. Sure.</p> <p>22 A. Did they -- did they check the</p> <p>23 restraints? Did they check the straps? I don't see</p> <p>24 any evidence here that they did anything related to</p>

<p style="text-align: right;">Page 58</p> <p>1 report and the conclusions you draw, is it your 2 position that my client, Dr. Mallik, breached any type 3 of standard of care that might be applied to him as a 4 psychiatrist?</p> <p>5 A. So insofar as there are standards of care 6 that have been issued by the various accreditation 7 bodies and professional organizations and insofar as 8 those are, you know, ethical standards that may ramify 9 across clinical issues, I would say yes.</p> <p>10 Q. Okay. And, you know, your report isn't 11 extremely long. It's only, you know, eight or nine 12 pages, with the exception of the references. What 13 specifically, in your opinion, did he -- what ethical 14 violations did he commit that you think might amount 15 to a breach of the standard of care?</p> <p>16 A. It was not clear to me that Dr. Mallik 17 was able to provide comprehensive evaluation and 18 treatment to the patients of the jail, in particular, 19 Mr. Whitehurst, because he was not present enough to 20 be able to do that and so that would be one of the 21 sort of main challenges. To provide adequate 22 comprehensive mental healthcare requires a certain 23 amount of time and presence, which I do not believe, 24 from what I read, that Dr. Mallik provided.</p>	<p style="text-align: right;">Page 60</p> <p>1 So I don't know what Dr. Williams is 2 saying in terms of guidelines to, like, lay out the 3 frequency of rounding; however, I would argue that 4 rounding is part of a professional standard of 5 continuity of care.</p> <p>6 Q. Okay. And it is his opinion at the end 7 of that paragraph that the frequency of assessment by 8 Dr. Mallik met the standard of care. So without going 9 through all that again, your opinion is that you 10 disagree with that or maybe you don't?</p> <p>11 A. Well, I found that that paragraph where 12 it's linked up with reimbursement purposes to be 13 problematic. I mean it was like a speculation around 14 why rounding happens and that's not actually -- that's 15 nowhere in the literature. I've never heard that 16 rounding is a result of billing -- for billing 17 reasons.</p> <p>18 It is a matter of quality comprehensive 19 healthcare that the attendings -- and, in this case, 20 Dr. Mallik is an attending -- round and evaluate their 21 patients on a daily basis, you know; and I would 22 construe the Delta Block as almost like an Intensive 23 Care Unit where there's very, very sick individuals 24 sometimes and, in Intensive Care Units, doctors round.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. So I'll jump right ahead to that. 2 Did you have an opportunity to review any of the 3 expert reports from Dr. Williams?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. Penn colleague.</p> <p>7 Q. In the first report on page 4, he 8 addresses this and you can -- I don't know if your 9 counsel or --</p> <p>10 A. I have it here on my screen.</p> <p>11 Q. Okay.</p> <p>12 A. Yeah.</p> <p>13 Q. So page 4 it says, "Regarding the 14 appropriate frequency of psychiatrist rounding on 15 patients and, therefore, the appropriateness of 16 follow-up intervals generally, no guideline exists 17 specifying the frequency to deliver the best care." 18 Do you not agree that with statement?</p> <p>19 A. There are particular professional 20 standards in medicine that may or may not be written 21 down in a particular place, but rounding is 22 conventional in every medical setting that I've ever 23 been exposed to, daily rounding; and for patients who 24 are extremely ill, it happens sometimes twice a day.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Now, there was some testimony previously 2 about a -- and I think it was specifically in regards 3 to the daily rounding requirement and you had 4 mentioned a community standard?</p> <p>5 A. Professional standard.</p> <p>6 Q. Okay. Did you use community standard or 7 am I -- did I find that from somewhere else?</p> <p>8 A. Did I just say community standard?</p> <p>9 Q. No, no, no. I wrote that down before, as 10 I thought that was part of your testimony, but you can 11 clarify.</p> <p>12 A. I would clarify and say it's a 13 professional -- it's a professional standard --</p> <p>14 Q. Okay.</p> <p>15 A. -- to round and to essentially maintain 16 constant vigilance for very sick patients.</p> <p>17 Q. So do you have any understanding of 18 community standards as they apply to medical doctors?</p> <p>19 A. With regard to what?</p> <p>20 Q. The standard of care.</p> <p>21 A. And specifically what standard of care?</p> <p>22 For what?</p> <p>23 Q. For any --</p> <p>24 A. For psychiatrists?</p>



<p style="text-align: right;">Page 66</p> <p>1 A. So I believe in his deposition he may 2 have gestured to certain interactions with that -- 3 with Mr. Whitehurst, but I cannot say for sure how 4 long those interactions lasted; but again I'm, you 5 know, thinking back to the deposition -- 6 Q. Sure. 7 A. -- and not the progress notes. 8 Q. Is it your opinion that Dr. Mallik 9 specifically did not provide adequate, competent, and 10 appropriate medical care to Mr. Whitehurst? 11 A. That is my opinion. 12 Q. Okay. Do you believe you have standing 13 to make that opinion? 14 A. Insofar as I understand the guidelines 15 issued by accreditation bodies and professional 16 societies regarding how adequate, comprehensive, 17 and -- adequate, comprehensive psychiatric care is 18 grounded in. Ethical psychiatric care, yes. 19 Q. Okay. And that's based on? 20 A. Because by not providing -- by not 21 providing ethical -- you know, the breaches of ethics 22 drive oftentimes clinical shortcomings. 23 Q. That's based off of the guidelines of the 24 APA; correct?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. And, again, it's not in your report? 2 A. No. I didn't -- I have taught it and 3 read it, but I'm having a mind blank on it. 4 Q. Yeah, and it's not a test. I'm not -- 5 A. Yeah, no. 6 Q. I just wanted to know your -- 7 A. Yeah. I didn't use it in my report. 8 MR. FRANCIS: Okay. Fair enough. I 9 believe that's all the questions I have. 10 --- 11 EXAMINATION 12 BY MR. HEISLER: 13 Q. Just a question or two. You used the 14 term National Commission on occasion. When you refer 15 to the National Commission, are you referring to the 16 National Commission on Correctional Health Care? 17 A. I am, yeah. Sorry. I thought I'd 18 shorten it. 19 Q. That's fine. And have you ever checked 20 out their website? 21 A. Yes. 22 Q. Okay. I'm going to ask you something, 23 whether this is a fair statement. "NCCHC's standards 24 present recommendations for the management of a</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Correct. 2 Q. Are you a member of the APA? 3 A. I am not. I'm not a physician. 4 Q. Are you aware of the Mental Health 5 Procedures Act? 6 A. Yes. 7 Q. Okay. Tell me what you know about that 8 or your understanding. 9 A. I don't -- I'm -- so can you ask me 10 specifically about -- I don't recall the -- I'm having 11 a mind blank right now, but I've read it. I know it, 12 but I forget it. 13 Q. Okay. 14 A. I don't recall specifics. 15 Q. Okay. Was it a consideration of yours -- 16 because I don't believe -- 17 A. It was not in the report. 18 Q. Okay. So it's not in your report -- 19 A. Yeah. 20 Q. -- correct? Regarding any type of 21 standard of care applied to the Mental Health 22 Procedures Act, is it your opinion that Dr. Mallik 23 breached that applicable standard? 24 A. I can't say. Yeah.</p>	<p style="text-align: right;">Page 69</p> <p>1 correctional health services system." Does that 2 coincide with what you believe this organization does? 3 A. Yes. 4 MR. HEISLER: I have no further 5 questions. 6 --- 7 EXAMINATION 8 BY MR. PARKINS: 9 Q. Doctor, I'm going to go through some of 10 the points that Attorney Healey and the other 11 attorneys went over with you. I want to talk about 12 the ethical standards versus standard of care. Okay? 13 A. Okay. 14 Q. And you were specifically asked I think a 15 couple of times whether or not you're a doctor and 16 whether you can comment on standard of care. Do you 17 recall that? 18 A. Yes. 19 Q. And I believe your testimony was that the 20 ethical standard is not always analogous to the 21 standard of care; correct? 22 A. I believe -- I believe I -- I don't think 23 I used the word analogous, but they're not -- they're 24 not a hundred percent congruent sometimes, yes.</p>



<p style="text-align: right;">Page 74</p> <p>1 obviously I think we'd all agree prison medical has to  2 provide medical care and psychiatric care; correct?  3 A. Absolutely.  4 Q. Is there an ethical requirement for a  5 prison medical to provide detox services?  6 A. Absolutely.  7 Q. And to the extent that Mr. Whitehurst was  8 suffering from a spice withdrawal, based on your  9 review of the record, was ethical treatment provided  10 in terms of detox?  11 A. So --  12 MR. HEALEY: Objection. Sorry. Go  13 ahead.  14 THE WITNESS: Oh, I thought you -- so  15 initially I couldn't tell because I couldn't really  16 decipher the notes, but when I -- I read some of the  17 other -- some of the other reports. It appeared that  18 he was being given Ativan I believe and antipsychotics  19 and, again, not being a clinician, but I do -- I do  20 read. I do know that those are often used for  21 withdrawal.  22 The problem I feel like is about the  23 duration of the seclusion and the fact that it  24 exacerbated his underlying condition.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. You can answer.  2 MR. FRANCIS: Objection to the form.  3 BY MR. HEALEY:  4 Q. Your characterization that they shouldn't  5 be used as a holding pen for someone with mental  6 illness, based on your review of the record, is that  7 what happened in this case?  8 MR. FRANCIS: Object to the form.  9 BY MR. PARKINS:  10 Q. You can answer.  11 A. Can I answer? Yes, I would say so.  12 MR. PARKINS: All right. Do you want  13 to -- he's got to switch cards.  14 THE VIDEOGRAPHER: The time is now 2:46.  15 This ends media unit one.  16 (A brief recess was taken.)  17 THE VIDEOGRAPHER: The time is now 2:47.  18 This begins media unit number two. Back on the  19 record.  20 BY MR. PARKINS:  21 Q. So we were talking about the camera cells  22 or the solitary confinement; right?  23 A. Yeah.  24 Q. And you mentioned a lot during your</p>
<p style="text-align: right;">Page 75</p> <p>1 BY MR. PARKINS:  2 Q. So let's talk -- let's talk about two  3 things, the seclusion and the restraint chair. Okay?  4 A. Okay.  5 Q. What is -- could you just first describe  6 generally the ethical considerations regarding  7 seclusion in camera cells?  8 A. So seclusion -- I mean let's start  9 globally and then work our way down. Solitary  10 confinement is generally considered by most  11 international conventions to be essentially torture  12 and it is unjustified in the treatment or the  13 seclusion of individuals with mental illness when  14 there's an alternative -- when there's alternatives  15 available to provide that individual adequate  16 treatment to stabilize the individual. They should  17 not be used as essentially holding pens for  18 individuals who are in psychiatric crisis.  19 Q. Is that what was done in this case?  20 THE VIDEOGRAPHER: Counsel, I have one  21 minute.  22 BY MR. PARKINS:  23 Q. Is that what was done in this case?  24 A. Sorry?</p>	<p style="text-align: right;">Page 77</p> <p>1 testimony -- you were using the term serious mental  2 illness.  3 A. Correct.  4 Q. Is that correct?  5 A. Yeah.  6 Q. How would you define that?  7 A. So I wouldn't define it. IMH defines it  8 it as really three conditions: Major depressive  9 disorder, schizophrenia, or bipolar disorder.  10 Q. And based on your review of the record,  11 was Mr. Whitehurst suffering from a serious mental  12 illness from May 24th of 2015 through June 9th of  13 2015?  14 A. It appears that he had a --  15 MR. FRANCIS: Objection to form. You can  16 answer.  17 BY MR. PARKINS:  18 Q. You can answer.  19 A. It appears that he was experiencing a  20 psychotic break, whether it was secondary to spice or  21 something else. Again as we just -- as I just  22 described is not relevant, but it appears that from my  23 reading of the records and, you know, viewing of the  24 video that Mr. Whitehurst was experiencing a serious</p>

<p style="text-align: right;">Page 82</p> <p>1 appropriateness of the restraint chair.</p> <p>2 Q. Okay. But I think what I'm asking is</p> <p>3 those policies on their face, are they adequate or are</p> <p>4 they defective, the Lackawanna County restraint chair</p> <p>5 policies?</p> <p>6 A. They reflect the -- so every 15-minute</p> <p>7 intervals and things like this, they do get some</p> <p>8 things right in there. The issue, however, is the</p> <p>9 duration and they peg it at like -- 10 hours I think</p> <p>10 is like the max and that's not what I'm -- my</p> <p>11 understanding is would be the ethical consensus on</p> <p>12 that.</p> <p>13 Q. So it's your opinion that the Lackawanna</p> <p>14 County's policy allows for placement in the restraint</p> <p>15 chair for excessive periods of time?</p> <p>16 A. Yes.</p> <p>17 MR. HEISLER: Objection.</p> <p>18 MR. FRANCIS: Join to the form.</p> <p>19 BY MR. PARKINS:</p> <p>20 Q. Is that a "yes"?</p> <p>21 A. That is a yes.</p> <p>22 Q. Specifically the policies of Correctional</p> <p>23 Care and Dr. Zaloga in regards to solitary and the</p> <p>24 restraint chair, defective, adequate, or nonexistent?</p>	<p style="text-align: right;">Page 84</p> <p>1 Sections 9.01 through 9.04 of Lackawanna County's</p> <p>2 policies regarding prison medical?</p> <p>3 A. I did. Let me just bring it back up so I</p> <p>4 have it in front of me. The pages are a little out of</p> <p>5 order but, yes, I did.</p> <p>6 Q. In regards to those policies, are they an</p> <p>7 adequate substitution for policies on behalf of</p> <p>8 Correctional Care?</p> <p>9 A. No.</p> <p>10 Q. Why?</p> <p>11 A. Because they provide discretion. They</p> <p>12 offer discretion to the provider and it is I guess a</p> <p>13 safe assumption that the provider would have their own</p> <p>14 processes and policies in place, which I don't believe</p> <p>15 they do.</p> <p>16 Q. Do you have an opinion as to whether or</p> <p>17 not Lackawanna County's policies and Correctional</p> <p>18 Care's lack of policies caused some of the injuries</p> <p>19 sustained in this case?</p> <p>20 MR. HEALEY: Objection.</p> <p>21 MR. HEISLER: Objection to form.</p> <p>22 MR. FRANCIS: Join.</p> <p>23 THE WITNESS: Insofar as there is no</p> <p>24 standard operating procedure, no resource for</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Nonexistent.</p> <p>2 Q. Why do you say that?</p> <p>3 A. Because they don't exist. He has no</p> <p>4 policies that guide the clinical matters involving</p> <p>5 seclusion and restraint and he said so himself.</p> <p>6 Q. In his deposition?</p> <p>7 A. Correct.</p> <p>8 Q. Does he have any medical written policies</p> <p>9 whatsoever?</p> <p>10 A. He does not.</p> <p>11 Q. Okay. And "he" being Dr. Zaloga; is that</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Is the utter failure to adopt a written</p> <p>15 policy an ethical violation and/or a violation of the</p> <p>16 standard of care?</p> <p>17 MR. HEALEY: Objection.</p> <p>18 THE WITNESS: Yes. I've never</p> <p>19 encountered a medical provider, you know, a service</p> <p>20 provider company that has nothing -- has no policy</p> <p>21 book, no employee handbook, nothing. I've never</p> <p>22 encountered that.</p> <p>23 BY MR. PARKINS:</p> <p>24 Q. Did you have a chance to review</p>	<p style="text-align: right;">Page 85</p> <p>1 employees to draw upon, no way for clinicians employed</p> <p>2 by CCI to know that they're practicing at or above the</p> <p>3 standard of care, no policies involving training and</p> <p>4 expectations, no policies involving the medical</p> <p>5 decision making when it comes to individuals with a</p> <p>6 serious mental illness who are restrained and in</p> <p>7 seclusion, yes.</p> <p>8 BY MR. PARKINS:</p> <p>9 Q. Let's -- and I know I'm jumping around</p> <p>10 here a little bit. We talked about the solitary.</p> <p>11 Let's talk specifically about the restraint chair.</p> <p>12 What are the ethical considerations in regards to</p> <p>13 placing an inmate in a restraint chair?</p> <p>14 A. Well, first off, again this is another</p> <p>15 intervention that is not to be used haphazardly of</p> <p>16 course. It should be rarely used, if it all; and it</p> <p>17 is considered, if it is done inappropriately or if it</p> <p>18 is used excessively, to be a fundamental violation of</p> <p>19 human rights.</p> <p>20 Q. And, in your review of this case, what's</p> <p>21 your opinion as to whether or not Mr. Whitehurst's</p> <p>22 placement in the restraint care was ethical and</p> <p>23 excessive -- or excessive?</p> <p>24 A. It was both. It was excessive. It was</p>



<p style="text-align: right;">Page 90</p> <p>1 whom the company may contract. All decisions  2 regarding hospital admissions with respect to care are  3 medical decisions to be made by the appropriate  4 medical personnel. Every effort will be made to  5 provide as much care as possible on site so as to  6 minimize the disruption in correctional staffing."  7 That -- the last sentence about minimizing --  8 A. Yeah.  9 Q. Or incentivizing onsite treatment --  10 A. Right.  11 Q. -- is that an ethical provision?  12 MR. HEALEY: Objection.  13 THE WITNESS: It -- I mean it's -- it  14 creates again this perverse incentive to not transfer  15 patients to the appropriate setting, which is kind of  16 what I was trying to get at earlier. The idea that  17 staffing rearranging or resource shifting is a problem  18 does not override or supersede the rights of the  19 individual patient to be provided with adequate  20 healthcare in the setting that is indicated or is  21 appropriate.  22 BY MR. PARKINS:  23 Q. You were asked a little bit about  24 standards in correctional center -- or correctional</p>	<p style="text-align: right;">Page 92</p> <p>1 A. The ideal community standard.  2 Q. And can you explain the difference there  3 or what that means?  4 A. So insofar as there's a -- sort of an  5 aspirational goal that individuals with serious mental  6 illness will receive care, appropriate care at the  7 right place, at the right time, that there will be a  8 continuity of treatment options from outpatient care  9 to sort of inpatient, but then emergency care that  10 would be referred out, that would be -- that would be  11 kind of the aspirational community model. That should  12 be what correctional facilities strive to meet.  13 Q. So the -- so the standard to be applied  14 in correctional facilities actually exceeds the  15 community standard or is a higher standard; is that  16 correct?  17 A. I would --  18 MR. HEALEY: Objection.  19 MR. FRANCIS: Object to the form.  20 BY MR. PARKINS:  21 Q. Is it a higher or lower standard?  22 A. I would say it should be at the very  23 least the same, if not better, because, remember,  24 these are individuals who have no choice in how to</p>
<p style="text-align: right;">Page 91</p> <p>1 facilities versus jails or prisons versus jails?  2 A. Um-hum.  3 Q. Do you recall that?  4 A. Yes.  5 Q. When it comes to medical ethics, does --  6 do the ethics change whether or not you're in a jail  7 or a state prison?  8 A. No, no.  9 Q. And when you talk about the standards,  10 the standards for care in jails, how does that relate  11 to the -- I think you were being asked about the  12 community standard. Is it higher or lower? The same?  13 A. Oh, okay. Yeah. So in terms of the  14 community standard for care, so typically the idea  15 there is that the healthcare provisions inside of a  16 correctional institution should meet or exceed the  17 community standards ideally. You know, that -- you  18 know, as an ethicist, I think about what ought to be  19 the case, not what is the case, and so it ought to be  20 the case that the community standard should be met  21 within inside the jail.  22 Q. Is the jail standard supposed to be the  23 community standard or is it supposed -- the actual  24 community standard or the ideal community standard?</p>	<p style="text-align: right;">Page 93</p> <p>1 access healthcare and I believe, you know, there's  2 case law on this where it's -- where it's shown that  3 these individuals have a constitutional right to  4 adequate healthcare and mental healthcare.  5 Q. In regard to the -- in regard to the  6 restraint chair use, Attorney Healey showed you a copy  7 of the nurse's notes from the first day in the  8 restraint chair. Do you recall them?  9 A. Yeah.  10 Q. And I think there was a nurse checking  11 when he went in the chair, when he came out of the  12 chair, and once in between; is that correct?  13 A. I believe it was twice in between, but it  14 was -- the first one was essentially when he went in  15 like 20 -- 30 minutes later.  16 Q. So it was like 12:30 -- or 11:30 at night  17 or 12 -- or 11:50 at night?  18 A. Eleven --  19 Q. Eleven fifty at night, 4:30 in the  20 morning, and then 9:00; correct?  21 A. Thereabouts.  22 Q. So is -- should somebody in a restraint  23 chair be checked by medical more or less than once  24 every four hours?</p>



<p style="text-align: right;">Page 98</p> <p>1 of patients?</p> <p>2 A. I don't believe so.</p> <p>3 MR. FRANCIS: Objection to form.</p> <p>4 MR. HEALEY: Objection.</p> <p>5 MR. HEISLER: Objection.</p> <p>6 THE WITNESS: I don't believe so.</p> <p>7 BY MR. PARKINS:</p> <p>8 Q. I'm going to show you a copy of</p> <p>9 Dr. Folks's report.</p> <p>10 A. Okay.</p> <p>11 Q. Did you have an opportunity to review</p> <p>12 that prior to today?</p> <p>13 A. Yes.</p> <p>14 Q. And could you turn to page 25?</p> <p>15 A. I'm just going to use my screen copy</p> <p>16 here, if that's okay.</p> <p>17 Q. Yeah.</p> <p>18 A. Yes.</p> <p>19 Q. I just want to talk to you about some of</p> <p>20 the --</p> <p>21 A. Oh, yes.</p> <p>22 Q. Some of his comments on your report.</p> <p>23 Okay?</p> <p>24 A. Yeah, sure.</p>	<p style="text-align: right;">Page 100</p> <p>1 for the psychiatric management of patients through his</p> <p>2 own practices." What's your response to that?</p> <p>3 A. I mean if there -- if CCI has policies,</p> <p>4 I'd like to see them. I don't believe, you know, they</p> <p>5 do and, if they do, please show me.</p> <p>6 Q. Based upon Dr. Zaloga's deposition --</p> <p>7 A. He --</p> <p>8 Q. -- do they have any policies?</p> <p>9 A. I believe he said his policy is, like,</p> <p>10 right treatment, right time or something like that.</p> <p>11 Q. Is that an ethical policy?</p> <p>12 A. It's not a policy. I wouldn't even --</p> <p>13 you know, it's not even something to entertain as</p> <p>14 ethical or not.</p> <p>15 Q. And is Dr. Mallik's personal practice a</p> <p>16 substitute for written policies?</p> <p>17 MR. FRANCIS: Object to the form.</p> <p>18 THE WITNESS: A substitute? No.</p> <p>19 BY MR. PARKINS:</p> <p>20 Q. In paragraph 4 he says, "In his</p> <p>21 discussion of the medical ethics principles of justice</p> <p>22 and fairness, Dr. Sisti apparently ignores the fact</p> <p>23 that these are incarcerated individuals and treatment</p> <p>24 of mental health conditions for them in a setting</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. The -- number 2 where he says, "I did not</p> <p>2 see in the record that Drs. Mallik and Zaloga were</p> <p>3 largely absent from the facility. I disagree with his</p> <p>4 conclusions that psychiatric and nursing staffing at</p> <p>5 LCP was below the standard of care." Could you just</p> <p>6 state how you came to the conclusion that Drs. Mallik</p> <p>7 and Zaloga were largely absent and what you relied</p> <p>8 upon in forming that conclusion?</p> <p>9 A. Yes, I can. The contract, which</p> <p>10 stipulates six to nine hours for Dr. Mallik, means</p> <p>11 that 34 -- well, let's say a workweek is 40 hours,</p> <p>12 which is probably more for most physicians but, you</p> <p>13 know, six to nine hours is a fraction of that. So</p> <p>14 when I say absent, I don't mean he wasn't there for</p> <p>15 the contractual period. He was. I have no reason to</p> <p>16 believe he didn't fulfill those hours, but those hours</p> <p>17 themselves were insufficient to manage a case load</p> <p>18 that probably is in the hundreds. So -- you know, so</p> <p>19 that was basically how I thought about it. Yeah.</p> <p>20 Q. The next page he says, "I disagree that</p> <p>21 there were no policies in place for LCP to guide the</p> <p>22 mental health screening, management, observation, and</p> <p>23 restraint of inmates at the LCP. In addition, CCI</p> <p>24 depended upon Dr. Mallik to develop treatment plans</p>	<p style="text-align: right;">Page 101</p> <p>1 other than the jail involves other security logistical</p> <p>2 and judicial factors." Does the fact these people are</p> <p>3 incarcerated change the ethical guidelines?</p> <p>4 A. Yes. It makes them more robust, in fact.</p> <p>5 Q. Why?</p> <p>6 A. Not less.</p> <p>7 Q. Why?</p> <p>8 A. Because they're a vulnerable population</p> <p>9 who has a constraint choice around their medical</p> <p>10 decisions and choices so yeah. In fact, there are</p> <p>11 differences and they happen to be more stringent.</p> <p>12 Q. Okay. Paragraph 5, "These policy</p> <p>13 statements of psychiatric organizations primarily</p> <p>14 address long-term restrictive housing of inmates with</p> <p>15 chronic mental illness."</p> <p>16 A. That's just false.</p> <p>17 Q. And, furthermore, let's just say -- let's</p> <p>18 accept it's true for a second. Does Lackawanna County</p> <p>19 Prison have long-term restrictive housing of inmates</p> <p>20 with chronic mental illness?</p> <p>21 A. Yes.</p> <p>22 Q. And was that something that Amir</p> <p>23 Whitehurst was subjected to?</p> <p>24 A. Yes.</p>

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1 of Corrections that the medical director be on site  
 2 more than two days a week, using your reasoning?  
 3 A. That's not my reasoning.  
 4 Q. Okay. What is your reasoning? Why does  
 5 Dr. Zaloga have to be there?  
 6 A. I didn't say he had -- I didn't say how  
 7 much or how little he had to be there. I just said he  
 8 wasn't present. Therefore, it was unclear to me that  
 9 there was any accountability, any knowledge, any  
 10 supervision.  
 11 Q. How do you know he wasn't present?  
 12 A. From depositions -- well, from the  
 13 nurse -- from Nurse Reed's deposition in particular.  
 14 Q. Right. Nurse Reed, who was fired for  
 15 having her security clearance pulled; correct?  
 16 A. Fired for what?  
 17 Q. Having her security clearance pulled by  
 18 the warden.  
 19 A. I guess so. Is that --  
 20 Q. And then you didn't review the transcript  
 21 of Alexis Moritzkat, who actually cared for the  
 22 plaintiff and said there were no problems at all with  
 23 staffing or attendance or anything? You didn't review  
 24 that?

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1 A. I don't have a copy of that.  
 2 Q. Right. You reviewed the transcript of a  
 3 disgruntled nurse, correct, and relied on it?  
 4 A. I didn't see it as a -- I didn't see her  
 5 as a disgruntled nurse.  
 6 Q. No?  
 7 A. No.  
 8 Q. Her cross-examination didn't strike you  
 9 as someone who didn't think she should have been  
 10 fired?  
 11 A. I don't necessarily think that a person  
 12 who is fired and believes that it was unjust is  
 13 disgruntled. They may have a rational set of  
 14 arguments as to why that firing was unjustified.  
 15 Q. Do you know why she was fired?  
 16 A. I don't.  
 17 Q. Okay. Did you read in her transcript why  
 18 she was fired?  
 19 A. No.  
 20 Q. You didn't see that?  
 21 A. If I did, I forget.  
 22 MR. HEALEY: Okay. Those are all the  
 23 questions.  
 24 - - -

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1 FURTHER EXAMINATION  
 2 BY MR. FRANCIS:  
 3 Q. Doctor, I just have a housekeeping. I  
 4 don't know if you provided plaintiff's counsel with a  
 5 CV or do you have one today?  
 6 A. For my CV?  
 7 Q. Yeah.  
 8 A. Yes. I do have a -- I thought I brought  
 9 a copy.  
 10 MR. PARKINS: It's in that file  
 11 (indicating).  
 12 MR. FRANCIS: You do have it?  
 13 MR. PARKINS: I definitely e-mailed them  
 14 to you.  
 15 MR. FRANCIS: Okay. I just didn't see it  
 16 in our --  
 17 MR. HEALEY: I have an extra one.  
 18 MR. FRANCIS: I don't need it right now.  
 19 BY MR. FRANCIS:  
 20 Q. The only other question I had, Doctor,  
 21 was in your report you reference a number of  
 22 publications that you've made over the -- your  
 23 career?  
 24 A. Yeah.

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1 Q. Are those references contained in your  
 2 CV?  
 3 A. Yeah, they are.  
 4 Q. Okay.  
 5 A. Yeah, they should be.  
 6 MS. FREILER: They are.  
 7 MR. FRANCIS: All right.  
 8 THE WITNESS: It's a little hard to find  
 9 sometimes, but it's a Penn template. In fact, one of  
 10 your experts use the same template.  
 11 MR. FRANCIS: Okay. Perfect. That's all  
 12 I have.  
 13 - - -  
 14 FURTHER EXAMINATION  
 15 BY MR. PARKINS:  
 16 Q. Briefly, are you aware -- just because  
 17 we're on the topic, are you aware that June Reed  
 18 succeeded in her Unemployment Compensation claim  
 19 against --  
 20 A. I'm not.  
 21 Q. -- Dr. Zaloga?  
 22 MR. HEISLER: Object to the form.  
 23 THE WITNESS: I'm not aware of anything  
 24 about June Reed and her --

28 (Pages 106 - 109)